

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Myria Petrou,

Plaintiff,

Civil Case No. 21-10110

v.

City of Ann Arbor, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

/

ORDER REGARDING VOLUNTARY DISMISSAL

Acting *pro se*, Plaintiff filed this action against several Defendants. But Plaintiff later filed Notices, indicating that she wishes to dismiss this entire action without prejudice under Fed. R. Civ. P. 41. (*See* ECF Nos. 21 and 25).

The docket reflects that two Defendants (Defendants Kelly and Cronin) had filed answers to the Complaint prior to the date on which Plaintiff filed her Notices. The remaining Defendants, including the City of Ann Arbor, did not file answers or summary judgment motions prior to the filing of Plaintiff's notices.

As such, this Court issued an Order providing that, "if any Defendant opposes the dismissal of this action without prejudice, that party must show cause, in writing, no later than July 30, 2021, why the action should not be dismissed without prejudice. Otherwise, the Court intends to dismiss this entire action without prejudice and close this case." (ECF No. 26).

On July 30, 2021, the City of Ann Arbor filed a response to the order, indicating that it opposes Plaintiff's request to dismiss this action without prejudice. (ECF No. 27). The remaining Defendants have not filed anything in response to the Court's Show Cause Order and

the time permitted for doing so has passed.

Rule 41 of the Federal Rules of Civil Procedure governs “Dismissal of Actions.” “Fed. R. Civ. P. 41(a)(1) limits the plaintiff’s authority to dismiss his complaint without prejudice and without the permission of either the adverse party or the court to the period of time before the defendant files an answer or a motion for summary judgment. During that period, the court has no discretion to deny such a dismissal.” *Aamot v. Kassal*, 1 F.3d 441, 443 (6th Cir. 1993); *see also Wellfount, Corp. v. Hennis Care Centre of Bolivar, Inc.*, 951 F.3d 769, 774 (6th Cir. 2020) (“Under Rule 41(a)(1), a qualifying plaintiff has an absolute right to withdraw its action and, once a notice of dismissal is filed, a district court ‘has no discretion to deny such a dismissal.’”).

Thus, “[u]nless a defendant has filed an answer or summary judgment motion, the governing provision is rule 41(a)(1). Defendants who desire to prevent plaintiffs from invoking their unfettered right to dismiss actions under rule 41(a)(1) may do so by taking the simple step of filing an answer.” *Aamot, supra*, at 444.

Here, Defendant City of Ann Arbor¹ did not serve either an answer or a summary judgment motion prior to Plaintiff’s filing of her notice of dismissal. As such, this Court has no discretion to prevent a dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

IT IS HEREBY ORDERED that the Clerk shall close this case pursuant to Plaintiff’s notices of voluntary dismissal without prejudice under Fed. R. Civ. P. 41(a)(1).

IT IS SO ORDERED.

¹While Defendants Kelly and Cronin could oppose the dismissal of the claims against them being without prejudice, because they filed answers prior to Plaintiff’s notices (*see, e.g., Courser v. Allard*, 2016 WL 10592322 (W.D. Mich. 2016); *Ames v. Ethicon Endo-Surgery, Inc.*, 2012 WL 215234 (W.D. Tenn. 2012)), they did not do so in response to this Court’s show cause order.

s/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: August 3, 2021